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BOOK REVIEWS

The Roman Assemblies from their Origin to the End of the Republic.

By GEORGE WILLIS BOTSFORD, Professor of History in Columbia University. (New York: The Macmillan Company, 1909. Pp. x, 521.)

Professor Botsford devotes the first five chapters of his work to the Elements of the Comitial Constitution: the political divisions and social composition of the primitive *populus*, the thirty-five tribes, the centuries, and the classes; the remaining chapters, the nineteenth and last being a summary, to the Assemblies themselves, their organization, procedure, and functions, resolutions, statutes and cases. The author begins with the composition of the Roman *populus*, and at the start shows his method. He brings to bear on the question all ancient authority which has had modern interpretation, as he should do, but also he is able to add much new authority, and he draws his conclusions from what the evidence shows. In the first chapter he demolishes the quite generally accepted theories advanced by Niebuhr that the three primitive Roman tribes were of different nationalities, and that the *curiae* were composed of *gentes*. For the first theory he finds no trace of an authority in the ancient writers. He notices the low political vitality of the Roman tribes when first met with in historical times, which points to their artificiality; he shows that the Italian city state did not grow from a tribe or combination of tribes, but from the *canton* which centered about a place of refuge or defence; and he concludes that a *pagus* or *canton* became a *populus* at the point of time when it asserted its political independence of the folk, and that the new state patterned its tribes and *curiae* after the folk. The second theory he displaces with the proof that the *gentes* were composed of families and not of *curiae*, and, as the earliest voting body was *curiate*, he establishes the important result that the *gens* had no connection with the comitial organization. In the second chapter the author again, from another point of view, attacks the most fundamental problem in the early political and constitutional history of Rome. Was the primitive Roman state made up exclusively of patricians.

or of patricians, plebeians, and clients, and therefore, assuming the first case, were the struggles up to the passage of the Hortensian law in 287 B.C. made by the plebeians and clients to gain citizenship, or, in the second case, being already citizens, were they striving to acquire certain social, economic, religious, and political privileges hitherto monopolized more or less by the patricians? Here the author is combatting such eminent authorities as Niebuhr, Schwegler, and Mommsen, but his argument is most convincing. From three points of view, the ancient, the conventional-modern, and the comparative-sociological, he shows that an exclusively patrician *populus* is impossible: (1) that it is not so much as hinted at in the Latin literature, (2) that to bolster up a preconceived patrician *populus* modern writers of great authority have either misused or ignored many facts, and finally (3) that the early Romans, like most primitive peoples, were not at all illiberal with their citizenship, but incorporated with themselves on terms of equality closely related folk, and did not begin to restrict citizenship until the fourth century B.C.

The next two chapters take up the very troublesome question of the establishment of the thirty-five tribes, and the arrangement, ascribed to Servius, of the centuries and classes as a basis for the census. Whatever else is true, the main fact is that Rome was growing, that the plebeians were increasing much faster than the patricians, and that the thirty votes of the *comitia curiata* were no longer representative enough. So a *comitia centuriata* with more votes, one hundred and ninety-three being the ultimate number, came into being, either modelled upon or closely bound up with the class rating for military service. To prove his main contention, that the "*comitia centuriata* developed from the early republican military organization, which was itself the result of a gradual growth," and therefore that "the army was at no time identical with the *comitia centuriata*," the author has made a study of what he calls the primitive Graeco-Italic army, and has brought together a mass of material which, although a bit bewildering, makes his theory extremely probable. However, granting that the army and the *comitia centuriata* were never identical, there is no reason why either could not have been identical with the other.

In part two of the book we come to the logical and uninterrupted history of the institutions for which the previous more controversial and disconnected chapters have been a preparation. At the very beginning Professor Botsford makes one of his most important and brilliant contributions in the discussion which shows that "whereas *concilium* is

singular, comitia is plural, a plural of the parts of which the whole is composed; in other words, the curiae, or centuries, or tribes, were originally thought of as little assemblies, whose sum total formed the comitia. Comitia therefore always has reference to the parts—the voting units—of which the assembly is composed, whereas concilium, as a singular, views the assembly without reference to its parts.” Then, in a most convincing and orderly fashion, the author brings forward the three kinds of Roman assemblies: the (1) contio, a listening or witnessing assembly, which could not vote, the (2) concilium, a deliberative assembly, which could vote, and (3) the comitia in its three organized forms—curiate, centuriate, and tribal—which did vote. It is of course with these three organized comitia, their changing jurisdiction, their procedure, and their legislation, that the rest of the book deals.

A ceremonial meeting in which the Roman citizens were grouped in curiae, probably under sacerdotal influence, became, because of its convenient organization, the comitia curiata. Its powers were very vague; it met only at the call of the king or chief magistrate to hear proposals, but even if it rejected a proposal by its viva-voce vote it had no power to carry out its expression of will. Probably the only case in which it was entirely expedient to get strong approval from this assembly was for a declaration of war, for such an oral approval was the strongest sort of obligation the citizens could make. A most interesting fact becomes clearer in the progress of the study of this comitia curiata. All the acts of the two later assemblies, the centuriate and the tribal, were legal without the confirmation of the curiae, but *election* by either *required* the curiate sanction. With the proof that the curiae in republican times retained in form if not in substance all the powers which they had ever actually possessed, we come to the startling fact that the comitia curiata in its own right had practically no powers at all, but only some slight legislative and administrative activity conceded to it by the king, and that the people through it had, in the regal period, succeeded in acquiring but one function, that of electing the chief magistrate.

The second Roman assembly, the comitia centuriata, showing in its make-up so many pronounced military features, came into being at about the same time as the Republic. This new assembly, based on classes on a money rating, at once assumed the right to enact laws, and made itself a final court of appeal for capital charges. But it was not able to take from the senate and the magistrates any administrative power, so it is not unexpected to find that a third assembly more democratic in character soon usurped the field, and under the presidency of a new

official, the tribune of the plebs, from an assembly with ill-defined powers in 471 B.C., rose to the dignity of the *comitia tributa* in 451-450 B.C. It was then that the commons wrung from the patricians the Twelve Tables, which enunciated clearly for the first time "the principle that the will of the people, whenever expressed, prevailed over every other authority." From 451 to 287 ensued the most interesting struggle Rome ever had, namely, that of the consuls and quaestors against the tribunes and aediles; the former with the more influence and experience, and backed by the senate and the patricians, although relatively few in number, but great in cohesiveness; the latter with the more power and energy and backed by the plebeians, more in number but often for that reason unreliable in crises. Over the *comitia centuriata*, the assembly of all the landholders in which class distinction based on wealth had gerrymandered the plebeians to practically no representation at all, presided the consul; over the *comitia tributa*, also the assembly of all the landholders in a tribal representation, where numbers relegated the patricians to a small minority, presided the tribune. The *comitia centuriata* started with implicit powers: elective, that of electing the consuls; and legislative, of declaring war; and later it gained the judicial, the first instance being that of the power of appeal. The tribune started with explicit powers, that of *auxilium* and *ius agendi cum plebe*, and from these two original functions, the force of which was based ultimately upon the revolutionary power of the plebs, grew the authority of the tribune, and with him grew the *comitia tributa*, which gained elective, judicial, and legislative powers also. Little by little the *comitia tributa* extended its field of competence at the expense of the *comitia centuriata*. In 321, after the battle of Caudium, it took from the senate and *comitia centuriata* the treaty rights, recording in this way the first expression of the doctrine of popular sovereignty among the Romans and thus stepping into competence in international affairs. In some way it took from the older assembly the institution of new magistracies, and in 327 by the creation of the promagistracy, and by the occasional suspension of laws in voting *privilegia*, it made itself more and more powerful; but at the same time it undermined the old idea of the sovereignty of the law when it began to subject the making of laws or their abrogation more and more to popular caprice, so that Livy was justified in stating of the times: *iam regi leges, non regere*.

But with the enactment of the Hortensian law, in 287 B.C., which made the plebiscite of the *comitia tributa* in every way equal to the *lex*, and gave full constitutional freedom to tribunician initiative, it seems

more than strange, as Professor Botsford makes clear, that no outburst of legislative energy followed. Here the author is especially keen in his diagnosis of the situation. The initiative in legislation controlled legislation, and as soon as those in control got what they wanted, legislation ceased. During the rapid increase in power of the *comitia tributa* the "popular tendency might have created a real democracy had it not been for (1) the cleverness of the nobles in gaining control of the plebeian tribunate and in using religion as a check on comitial freedom, (2) and the rapid expansion of the Roman power, which drew the public mind away from internal politics." By the Ovinian law the leaders of the plebs were assured of places in the senate, by various laws they were allowed to hold the other magistracies, and by the Hortensian law the relations between tribunate and senate were fixed. And thus the patricians again overreached the plebeians. The plebeian leaders, having gained now that equality which they had so long sought, could no longer bear the aggressiveness of the common citizens, and for "fifty-five years, 287-232, there is no record of the enactment of a distinctly administrative law." However a period followed, 232-201 B.C., which Professor Botsford calls the Flaminian era in which the assemblies not only gained what they had lost but more, and hosts of sumptuary, monetary, and private statutes were passed, and the "right of the people to grant dispensations from existing laws was recognized." But although the nobles recognized the people as sovereign, the people could not express their will through the *comitia* because of the checks on comitial legislation which the consul or senate could employ, and because of the lack of popular initiative, as the people could not convene for business unless summoned by a magistrate, and the magistrates, as has been noticed above, were now the willing ministers of the senate. The disasters which fell on the Roman army during the war with Hannibal were especially heavy upon the plebeians and did much to restrain their political activity, and under such "new circumstances the docility of the commons made possible the thorough organization of plutocracy on the basis of a democratic theory of government."

It was during this last mentioned "era of completed plutocracy, based on a recognition of popular sovereignty" that the nobles and the senate by the repression of individual freedom and the resumption of the function of dispensing from the laws and of appointing special courts again got control of the state. But it was their own undoing. A revolution broke out that swept both nobles and commons into the maelstrom of empire. Some of the more enlightened nobility began to see

that the "economic ruin of the peasant class was endangering the state," and that agrarian agitation began which was really launched with the famous *lex agraria* of December 10, 134 B.C., proposed by Tiberius Gracchus. He and his brother Gaius, both as tribunes, set the comitia tributa to the task of regenerating society. But the composition of that assembly was ill suited for successful regeneration, for it had too many venal and selfish members from the city proletariat. And now began the downfall of republican institutions, and in that century of conflict there are indeed scores of most striking analogies to present conditions in the United States. The Italian historian Ferrero has of late brought them to public attention with a certain startling force. For the first time in Roman history an actual magistracy was abrogated. Professor Botsford shows clearly that it was not unconstitutional, but it was a very wide departure from custom and was unwise, for it gave an unprincipled assembly an incentive to depose a man unpopular for the moment, and it gave an unprincipled man the incentive to buy or to coerce constitutional power. For a time the continued popularity of the commoner Marius swayed the assemblies, then the military power of Sulla, then the money and influence of the First Triumvirate, then the genius of Julius Caesar. With Caesar's accession to the dictatorship in 49 B.C. the assemblies of their own free will yielded to him the larger share of their functions.

And so for centuries the Roman assemblies developed, and the Republic prospered; they declined and the Republic came to an end. They fought for progress, and for human rights, they made equality before the law a fact, they established dignity of procedure and freedom of debate, but they failed because the Romans did not understand how to break with tradition. It was not possible to retain, as the Romans did, three successive comitia with conflicting functions, ill-defined jurisdictions, and jealously guarded traditions, nor was it possible to satisfy a growing state with assemblies composed of unrepresentative city proletarians. The Roman assemblies with their mistakes and their triumphs are a priceless heritage, and *The Roman Assemblies* of Professor Botsford is a very worthy account of them.¹

RALPH VAN DEMAN MAGOFFIN.

¹ I prefer to relegate to the obscurity of a note several unimportant criticisms. On page 220 there is a mistake in the sentence "ten centuries of juniors to the tribe", in the discussion on page 17 the author might have used the comment in Plutarch, *Romulus*, XXVI, at the end, beginning *leiton gar demosion* etc. The author is both fortunate and unfortunate in the fact that two very good